

REMARKS

Claims 1 to 37 were in the application as of the September 22, 2008 mailing date of the final Office Action. Claims 2 to 37 have been cancelled, without prejudice or disclaimer of subject matter, and claims 38 to 58 have been added. Claims 1, 52 and 53 are the independent claims. Reconsideration and further examination are respectfully requested.

Initially, since support for the features recited by the amendments and new claims is found throughout the application, including at least ¶¶ [0067] to [0072], the Applicants submit that no new matter has been added.

In the Office Action, the Examiner applied a constructive election, withdrawing claims 30 to 37 from consideration. As noted, above, claims 30 to 37 have been cancelled, without conceding the correctness of this constructive election. Since amended claim 1 retains the “receiving,” “facilitating,” and “metrics” features of the originally filed claims, the Applicants submit that any contemplated constructive election applied against these amendments would be *prima facie* improper.

Claims 14 to 16, 20, 21, and 23 to 25, which were rejected under 35 U.S.C. § 101, have also been cancelled without conceding the correctness of this rejection. With regard to new claim 52, however, which also claims a computer program, Applicants observe that “a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permits the computer program's functionality to be realized, and is thus statutory.” MPEP § 2106.01(I) (emphasis added).

Claim 3 was rejected under 35 U.S.C. § 112, ¶ 2; claims 1, 2, 9, 12 and 26 to 29 were under 35 U.S.C. § 102(e) over U.S. Patent Application Publication No. 2003/0154134 (“Wang”); and claims 3 to 5, 7, 10, 14 to 16, 20, 21 and 23 to 25 were rejected under 35 U.S.C. § 103(a) over Wang in view of U.S. Patent Application Publication No. 2005/0033648 (“Jin”). Claims 2 to 37 have been cancelled, without conceding the correctness of the rejections, and claim 1 has been amended to further clarify several additional features, as discussed more fully below. Withdrawal of the § 112, 102 and 103 rejections and further examination are requested.

Referring to particular claim language, independent claim 1 recites, *inter alia*, the features of “presenting a dashboard interface to an owner of items, the dashboard interface

providing the calculated metrics and a recommendation of the third party facilitator for improving the performance of the transaction.” Independent claims 52 and 53 recite similar features, in other contexts. Neither Wang nor Jin, either alone or in combination (assuming, *arguendo*, that such a combination were possible) disclose, teach or suggest, nor does the Office Action assert that these references suggest, at least the foregoing features.

Referring to cancelled claim 4, the Applicants thank the Examiner for the frank acknowledgement that “Wang .. does not expressly disclose recommendations to improve the sale price of items... .” *See* Office Action, pg. 6. Under a similar logic, then, the Applicants submit that Wang also does not disclose “a recommendation of the third party facilitator for improving the performance of the transaction.”

Jin does not remedy the deficiencies of Wang. The portion of Jin cited against the “recommendation” feature is reproduced below, for ease of reference:

Disclosed is a sales system for lots of items that includes business rule definition logic. The sales system also includes offering creation logic that is operative to dynamically create different offerings for items in the lots. The offering creation logic optimizes return based on one or more of the business rules by using different offering parameter values for the different offerings.

(*See* Jin, Abstract; and Office Action, pg. 7)

As best as can be understood from this short passage, the Applicants believe that the Examiner is equating the “creation logic that is operative to create different offerings for items in the lots” and which “optimizes return based on one or more of the business rules” with the previously claimed “recommendation” feature. Notably, however, this logic and these rules are not “of the third party facilitator,” but rather are “responsive to user business rule creation commands.” *See* Jin, ¶ [0010] (emphasis added). For instance, as described in association with the user interface of FIG. 8, into which the user enters various parameters, one exemplary stop rule allows “the customer” to stipulate conditions of the sale “to help eliminate poor performing inventory.” Such a limitation is contradistinctive from the provision of a recommendation of the

third party facilitator for improving the performance of the transaction.” A *prima facie* case of obviousness has thus not been shown.

The other rejected claims in the application are each dependent on the independent claims. Therefore, the dependent claims are allowable over the applied references for at least the above reasons. Because each claim is deemed to define additional aspects of the disclosure, however, the individual consideration of each claim on its own merits is respectfully requested. For instance, new dependent claims 50 and 51 further clarify that the recommendation is determined at the third party facilitator, and is not provided by the owner.

All of the pending issues have been addressed. However, the absence of a reply to a specific rejection, objection, issue, or comment, including the Office Action's characterizations of the references, does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment or cancellation of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment or cancellation. Since the amendments made herein have been made solely in an effort to expedite advancement of this case, the Applicants reserve the right to prosecute the rejected claims in further prosecution of this or related applications.

The Applicants respectfully submit that the application is in condition for allowance, which action is requested.

No fees are due. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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/David E. A. Jordan/

David E. A. Jordan
Reg. No. 50,325

Customer No. 26212
Fish & Richardson P.C.
Telephone: (202) 783-5070
Facsimile: (877) 769-7945
40522302.doc